

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 923 of 1999

in

SPECIAL CIVIL APPLICATION No 3837 of 1999

with

CIVIL APPLICATION NO. 6270 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VASNATRAI CHHAGANLAL GANDHI

Versus

VALSAD JILLA SAHKARI DUDH UTPADAK SANGH LTD.

Appearance:

MR JV JAPEE for Appellant

NANAVATI ASSOCIATES for Respondent No. 1

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE C.K.BUCH

Date of decision: 05/07/1999

ORAL JUDGEMENT

Admitted. Notice of admission is waived on behalf of Nanavati Associates. In the facts and circumstances of the case, the matter is taken up for final hearing today.

This appeal is filed against summary dismissal of Special Civil Application No. 3837 of 1999 on June 22, 1999.

The appellant was the original petitioner. He filed a petition against an order of suspension passed by the respondent Mandali and also against initiation of inquiry. The petition appears to have been filed during Summer Vacation. On 26.5.1999, the learned Vacation Judge issued Notice by making it returnable on 18.6.1999. It was stated at the bar by the learned counsel for the appellant that on 18.6.1999, the court taking up such matters was not available and hence it was adjourned to 22.6.1999. On 22.6.1999, therefore, it was to be heard effectively for the first time after issuance of Notice by the court. It was stated in the memorandum of appeal that the advocate for the appellant "was held up before the other court when the matter was called out" and the matter was disposed of in absence of the advocate for the petitioner.

In the facts and circumstances of the case, in our opinion, ends of justice will be met if the learned Single Judge passes appropriate orders on the petition on merits after affording an opportunity of hearing to the petitioner.

On behalf of the respondent, it was contended that the petition is not maintainable against the respondent inasmuch as it cannot be said to be 'State' or other instrumentality or agency of the State within the meaning of Article 12 of the Constitution of India. It was also contended that scope of judicial review is limited in such cases particularly when a preventive action of suspension and initiation of departmental inquiry is taken against the appellant.

We express no opinion on these questions. It is open to the learned counsel for the respondent to take all contentions before the learned Single Judge.

LPA is accordingly allowed. The order passed by the learned Single Judge is set aside. The learned Single Judge will now decide the matter strictly on its own merits. LPA is accordingly disposed of. No order as to costs. No order on civil application.

parekh